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Robert Haydock Jr

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CERTAINTY AND CONVENIENCE—CRITERIA FOR THE PLACE OF FILING UNDER THE UNIFORM COMMERCIAL CODE

ROBERT HAYDOCK, JR.*

INTRODUCTION

If a non-possessory security interest in personal property is of such a nature that public notice thereof is required to perfect it, there remain the questions of what form that notice should take and where it should be given. This article deals primarily with the second question—first in general terms, then as the question has been answered by the draftsmen of the Uniform Commercial Code,¹ and finally as it has been answered in the fourteen states which had adopted the Code at the time the article was prepared.

Anybody who has had close contact with a financing arrangement secured by collateral scattered through several states is aware of the great variety of the rules adopted by the different states for determining the proper place to file or record a security interest in personal property. Even within the same state the rules may vary depending on the form of instrument utilized. Boiled down, these rules are usually one or more variations of the five ways for establishing the place of filing (or recording) discussed below.

The relative merit of one way as compared with another must be determined in light of the purpose of the requirement that public notice be given before a security interest will be good against third parties. That purpose is obviously a dual one. It is to protect third parties who otherwise could be misled into taking action which they would not take if they knew of the security interest; and it is to permit a secured party to obtain a perfected security interest by some method more convenient to both the secured party and the debtor than giving possession of the collateral to the secured party. It is convenient to designate these interests as those of the Searcher—the third party who wants to know if a security interest exists—and those of the Filer—usually the secured party, who wants to be sure that his security interest is perfected.²

* A.B. 1939, LL.B. 1947, Harvard University; Partner in the firm of Bingham, Dana & Gould, Boston.

¹ All references are to the 1958 Official Text with Comments published by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.

² In a situation where the secured party is making a loan secured by a non-purchase money security interest, he will have the interests of both the Searcher and the Filer, since he will not want to make the loan until he is sure that there is no other financing statement covering the collateral and once he takes his security interest he will want to see that it is perfected and has priority over all subsequent interests in the same collateral.

From the Filer's point of view, the merit of a particular method of establishing the place of filing depends first of all on its certainty. How sure can he be that he has filed in the right place or places or that his filing continues to be effective? The second consideration is convenience. This is related to the first consideration to the extent that it involves the steps the Filer must take to establish his minimum degree of certainty, but it also takes into account the mechanical steps involved in the filing. Can the Filer walk across the street to do his filing or must he use the mails or a filing service?

Certainty and convenience are also the important considerations from the point of view of the Searcher, although their application often will not be the same as from the Filer's viewpoint. A requirement that a filing be made in two places, for example, would be more convenient for the Searcher than the Filer, since the Searcher ordinarily would only have to check one of them and could select the most convenient. Each of the following methods should be tested for certainty and convenience from both viewpoints.

FIVE PLACES TO FILE

Of the five methods for determining the place for filing a security interest generally used by states which have not adopted the Uniform Commercial Code, the first three fall in the category of "local filing"—a category covering methods for which the filing office is an office of a local geographic entity, such as a town or a county. Since county filing is the most generally accepted form of local filing (except in the northeastern United States), it should be given greater consideration in evaluating the first three methods below.

1. *Residence of the Debtor*: A widely used place for filing a security interest is the residence of the debtor. Before the growth of large business enterprises and at a time when people worked in the same locality in which they lived, this was a relatively satisfactory place for filing, from the point of view both of the Filer and of the Searcher. The debtor was ordinarily an individual and his residence was not too difficult to ascertain, so that the Filer could be certain as to where he should file and the Searcher would know where to look to determine what was on record. Since all aspects of the transaction, including the parties and the collateral, were usually located in one county, it was a convenient place to file.

Today, filing at the residence of the debtor is not always so simple. If the collateral is consumer goods³ and is located within the state, it is likely that the debtor will have a residence in the state, but there is considerable chance that such residence will be in a county different from the place of business of either the Filer or the Searcher.

³ See UCC § 9-109(1).

The real difficulties occur, however, when the collateral is business collateral. If the debtor is a foreign corporation, it is not a resident.⁴ This makes it necessary to provide some special or alternative filing rule for foreign corporations. Even where domestic corporations are concerned, there are difficulties. In many states the residence of a domestic corporation is the address shown in its articles of incorporation.⁵ Often, this is no longer its place or principal place of business. Such a situation creates a trap into which many an unwary Filer has fallen. It can be an equally dangerous trap for the unwary Searcher. Finally, the rule requiring filing at the debtor's residence creates difficulties where the debtor is a partnership. It has been held that the residence of a partnership is the residence or residences of its individual partners.⁶ Today, it is likely that a partnership will have several partners and that they will live in several counties. To provide that it is necessary to file only in the county of the partner giving the security interest would create uncertainty and inconvenience for the Searcher, since he would have to ascertain the residence of each partner and check the filing office of each of the residences to assure himself of the absence of a perfected security interest in partnership collateral. To provide that a filing, to be effective, must be made at the residence of each of the partners, on the other hand, is obviously inconvenient for the Filer and because of the greater possibility that he might overlook or make an error with respect to one residence, would make his filing less certain.

2. *Debtor's Principal Place of Business*: One solution that has been adopted for the difficulties mentioned above is to provide that in a transaction where the debtor is a partnership or a corporation, the filing shall be in the town or county where the debtor has its principal place of business.⁷ This type of filing must be limited to business transactions and would be clearly inappropriate for use in consumer transactions. Its principal drawback from the points of view of the Searcher and the Filer is the difficulty of ascertaining the debtor's principal place of business in those situations where the debtor has more than one place of business in the state. For example, if the debtor happened to be a chain store with its business office outside the state and outlets in two counties of the state, it might be impossible to determine which was the debtor's principal place of business in the state.⁸

⁴ *Babcock & Wilcox Co. v. Spaulding*, 86 F.2d 256 (1st Cir. 1936). But see *Fifth Third Union Trust Co. v. Kennedy*, 185 F.2d 833 (2d Cir. 1950).

⁵ See, e.g., *Fairbanks Shovel Co. v. Wills*, 240 U.S. 642 (1916); *Guterman v. Rice*, 121 F.2d 251 (1st Cir. 1941); *In Re Savage Mills, Inc.*, 170 F. Supp. 559 (E.D.N.Y. 1959); *In Re Merrymeeting Products Corporation*, 139 F. Supp. 625 (D. Me. 1956).

⁶ *Brandes v. Barber*, 13 F.2d 65 (8th Cir. 1926).

⁷ See Cal. Civ. Code § 2959a; Nev. Rev. Stat. § 106.100 (Supp. 1957).

⁸ The only solution, although not an entirely satisfactory one, would be the address

3. *Location of the Collateral:* Those states calling for local filing at the residence or place of business of the debtor also provide that if the debtor is a non-resident (or has no place of business in the state), the filing shall be made in the county (or town) where the collateral is located. A minority of states make the location of the collateral the only indicator for the place to file and make no reference to residence or place of business at all.

This particular method of selecting the place to file is fraught with inconvenience and uncertainty. One reason for this is that the time element is so tremendously important. In some states the Filer must file in the county (or town) where the collateral was located at the time the security agreement was executed.⁹ In other states it is the county (or town) where the collateral was located at the time of filing.¹⁰ In still others, this time element is not specified at all.¹¹ In addition, there may be situations in which the county (or town) where the debtor intends to keep the collateral is controlling.¹²

Closely related to this question of timing is the further question of determining what is in fact the location of the collateral. If a canal barge is being operated between county A and county B and passes through several counties on the way, must it actually be in county A at the time the agreement is executed in order to perfect the security interest by filing in county A; or can it be said to be constructively in county A if that is where it is kept when it is not in use?¹³ Suppose a farmer stores his tractor in one county in the winter but uses it in another county during the summer. How does one determine the county in which certain intangible and semi-intangible collateral, such as accounts receivable, patents, bills of lading and conditional sale contracts, is located?

Also related to these questions of timing and determination of the location of the collateral is the further question of whether a new filing is required when the collateral is moved from one county (or town) to another. Where collateral is readily movable and may in fact be moved to four or five different locations during its useful life, it would seem to defeat one purpose of filing—that of giving public notice—not to require a new filing every time the collateral is moved

given when the foreign corporation registers to do business. See N.Y. Lien Law § 239-1; N.C. Gen. Stat. § 47-20.2 (Supp. 1959).

⁹ See, e.g., Ind. Ann. Stat. § 51-509 (1951); Me. Rev. Stat. Ann. ch. 178, § 1 (1954); Mont. Rev. Codes Ann. § 52-304 (1947).

¹⁰ See, e.g., Del. Code Ann. tit. 25, § 2308 (1953); Idaho Code Ann. § 45-1103 (1947); Tex. Rev. Civ. Stat. art. 5490 (1948).

¹¹ See, e.g., Colo. Rev. Stat. Ann. § 20-1-8 (Supp. 1957); Md. Ann. Code art. 21, § 45 (1957); Wis. Stat. Ann. § 241.10 (1957).

¹² See Ariz. Rev. Stat. Ann. § 33-753.01 (Supp. 1961); Cal. Civ. Code § 2960—for filing purposes, property in transit situated where it is intended to be used.

¹³ See *Lucado v. Tutwiler's Adm'x*, 69 Va. (28 Gratt.) 26 (1877).

from one county (or town) to another. Without such a requirement, the often impossible burden of correctly establishing the location of the collateral throughout its entire life would be placed on the Searcher, for if collateral has been used in five counties, a security interest filed in any one of them at the time the collateral was there would remain perfected. On the other hand, a requirement that a new filing be made every time the collateral is moved from one filing entity to another is by no means a perfect solution to this problem, since the Filer ordinarily is given a grace period of from thirty days to a year to file after the collateral has been moved to the new location.¹⁴ Thus, the Searcher who looks in the filing office of the new location during the grace period may not find the security interest on record, even though such an interest exists and continues perfected until the running of the grace period.

There would seem to be no satisfactory solution to this problem of how to deal with collateral that is moved from its original location to a new filing entity. An unqualified requirement of a new filing, even with a grace period, may solve the problem from the Searcher's point of view, but it aggravates it from the Filer's point of view, since such a requirement destroys any certainty that his filing will continue effective unless he undertakes to police the collateral sufficiently so as to be always aware of its location. A compromise rule under which the Filer must file in the new location only if he consents to the collateral being moved¹⁵ is not a solution, since the Searcher has no way of knowing whether a prior secured party has consented to the location of the collateral at the time the Searcher is examining the files. A statute making it a crime for the debtor to move the collateral without notifying the secured party¹⁶ may help somewhat, but it is of no more value to a secured party who discovers his security interest is behind that of another person than a statute making double financing a crime.

The refiling problem also exists where the residence or place of business of the debtor governs the place of the original filing, but the problem has much smaller proportions, partly because a change of residence or place of business is generally less likely to occur than a change of the location of the collateral, and partly because, if refiling is required, it is relatively easier for the Filer to keep track of the residence or place of business of his debtor or, if refiling is not required, it is much easier for the Searcher to establish the prior residences or places of business of the debtor.

¹⁴ See, e.g., Ala. Code tit. 47, § 123 (1958)—three months; Cal. Civ. Code § 2965—thirty days; Va. Code Ann. § 55-98 (1959)—one year.

¹⁵ See, e.g., Del. Code Ann. tit. 25, § 2306 (1953); Idaho Code Ann. § 45-1107 (1947).

¹⁶ See, e.g., Ala. Code tit. 14, § 363 (1958); Cal. Pen. Code § 538; Va. Code Ann. § 18.1-116 (1960).

In summary, the rule calling for filing at the location of the collateral involves uncertainties as to the time at which the location is to be ascertained, uncertainties as to what is the actual location at that time, and serious inconvenience to both the Filer and the Searcher in ascertaining the location at the particular time. Furthermore, it raises a serious refiling problem. Finally, the inconvenience of filing at the location of the collateral is being aggravated by the growth of state-wide businesses, the financing of which may involve collateral located in every county of the state, as might be the case in the financing of a juke-box operator, a chain store or a leasing company. Of all the methods for determining the place of filing, the location of the collateral is by far the most unsatisfactory.

4. *Central Filing*: Central filing—filing in one state office regardless of the location of the collateral or the residence of the debtor—has been successfully utilized in trust receipt financing.¹⁷ It has the great advantage from the points of view of both the Filer and the Searcher of complete certainty as to the proper place to file in the state. There is no need to ascertain the residence or place of business of the debtor or the location of the collateral, other than to be sure that the collateral is within the state or subject to its filing provisions. There is no problem of refiling in the event there is a change in residence or location of collateral.

The drawback to central filing arises from the fact that the parties to a security transaction may be located at one end of a state and the filing office at the other end. The result is that, without additional expense, it takes longer to file or to check the files. If filing and checking is done by mail, completion of the transaction may be delayed a few days, particularly if the secured party is not prepared to perform his part of the bargain until he has confirmation of the filing and the fact that there are no other security interests in the collateral on record. If the secured party is selling the collateral to the debtor, however, and has a purchase money security interest, he would ordinarily be safe in delivering it immediately, since in most states a filing within a specified or reasonable time of the transaction relates back to the date of the transaction.¹⁸ Thus, the delay would

¹⁷ Although superseded in those states which have adopted the UCC, the Uniform Trust Receipts Act is still in effect in a majority of states. Section 13 of the official version provides for such central filing of statements.

¹⁸ In those states where the filing does not relate back there would be the risk that an intervening lien would be filed between the date of the execution of the security agreement and the date of filing. In a few other states there might also be the risk that a creditor who became such between the execution and perfection of the security interest—sometimes called a “gap creditor”—could subsequently defeat the security interest, even after its perfection, by obtaining a judicial lien. See Comment, 67 Yale L.J. 1024, 1056 (1958). In these states it would seem that the only safe thing to do would be to have the closing near the filing office so that the execution of the security

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only occur in a non-purchase money situation where, for example, a bank was making a loan against collateral already owned by the debtor. If it was necessary to avoid delay, the risks could be minimized by a telephone check of the files. The secured party would not be able to make this check himself, but might have to utilize a filing service to do it for him. The slight delay in non-purchase money transactions and the need to use a filing service where it was necessary to check the files would seem to be very minor drawbacks when weighed against the certainty and simplicity of central filing. In fact, modern transportation, communication and postal service would seem to have made local filing obsolete, except in special situations.

5. *Notation on Certificate of Title*: A majority of the states have adopted certificate of title laws with respect to motor vehicles and the majority of these title laws provide that the method of perfecting a security interest in a vehicle for which a title has been issued shall be by notation on the certificate. Sometimes this notation is made by a state officer, such as the Registrar of Motor Vehicles, and sometimes it is made by a county officer, so that this method of perfection cannot be generally classified as central or as local filing. Since the Uniform Commercial Code is drafted so as not to change this special method for perfecting security interests in motor vehicles where it is used, it is unnecessary to discuss it at length here.

THREE CODE OPTIONS

Section 9-401 of the official text of the Uniform Commercial Code contemplates that a state will adopt one of three optional methods for determining the place for filing a financing statement or financing statements. Unfortunately, the options are set out in a confusing manner which may well be the reason that certain states have departed from them.¹⁹

As the comment to Section 9-401 points out, the draftsmen of the Code have not tried to resolve the conflict between advocates of local filing and advocates of central filing. The first of the three options leans very much in the direction of central filing; the second option is a compromise between the two points of view; and the third leans more strongly towards local filing. It should be noted, however, that while the first and third options lean towards the extremes, neither goes all the way. The draftsmen wisely have not recommended completely local filing or completely central filing.

agreement and the signing thereof could be almost simultaneous. There is no "gap creditor" problem under the Code and a filing made with respect to a purchase money security interest within ten days after the collateral comes into the possession of the debtor relates back. See UCC §§ 9-301(2) and 9-312(4).

¹⁹ Paragraph (c) of Section 9-401(1), the paragraph which is intended to be common to all three options, is unfortunately labelled "*Optional paragraph (c)*" which

The options in Section 9-401 dealing with where to file a financing statement can be summarized as follows:

First Option

(a) When the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(b) In all other cases, in the office of the Secretary of State.

Second Option

(a) When the collateral is farm-connected collateral²⁰ or is consumer goods,

(i) in the county [town] where the debtor resides, or if the debtor is not a resident, where the goods are kept, and

(ii) in addition, when the collateral is crops in the county [town] where the land on which they grow is located;

(b) When the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) In all other cases, in the office of the Secretary of State.

Third Option

(a) When the collateral is farm-connected collateral or is consumer goods,

(i) In the county [town] where the debtor resides, or if the debtor is not a resident, where the goods are kept, and

(ii) in addition, when the collateral is crops in the county [town] where the land on which they grow is located;

(b) When the collateral is goods which are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) In all other cases,

(i) in the office of the Secretary of State, and

(ii) in addition, if the debtor has a place of business in only one county [town] of this state, file in such county, or, if the debtor has no place of business in this state, but resides in the state, file in the county [town] where he resides.

suggests that this paragraph may be omitted. It is only the additional language calling for dual filing that may be omitted.

²⁰ As herein used, the term "farm-connected collateral" means equipment used in farming operations, or farm products, or accounts, contract rights or general intangibles arising from or relating to the sale of farm products by a farmer. See UCC § 9-401(1)(a).

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The first option adopts local filing for fixtures and central filing for all other types of collateral. The second option adopts local filing for farm-connected collateral, consumer goods and fixtures (dual filing in the case of crops). It adopts central filing for all other types of collateral, which usually means business collateral or collateral given to secure a business loan.²¹ The third option also adopts local filing for farm-connected collateral, consumer goods, and fixtures, but for business collateral it adopts both central and local filing unless the debtor has no place of business and no residence in the state or has places of business in more than one county (or town, if the town is the geographic filing unit) in which case only central filing is required.

The first option has all the advantages of central filing discussed earlier. It has complete certainty from the points of view of both the Filer and the Searcher. The inconvenience which may result if there is considerable distance between the place of filing and the place of the transaction is eliminated if the security interest is a purchase money security interest. This is because if the security interest is a purchase money security interest, filing relates back if made within ten days of the delivery of possession of the collateral to the debtor, and because a purchase money security interest filed prior to or within that same ten day period takes precedence over a conflicting security interest in the collateral.²² For these reasons, the secured party ordinarily would not need to check the files for other financing statements covering the same collateral and would have ten days from delivery of the collateral to the debtor in which to file by mail.

A delay still might occur in a non-purchase money type of transaction where, for example, the secured party would not want to make a loan against collateral already owned by the debtor until he had confirmed that his financing statement was on record and that no other financing statement covering the same collateral was ahead of him. In many cases, however, such a delay could be eliminated by use of the provisions of the Code permitting the filing of a financing statement in advance of the preparation of the security agreement and the making of the loan.²³ The financing statement thus could be signed

²¹ The only types of goods falling in the category of "other cases" would be non-farm equipment and inventory, which by definition are business-connected. As to intangibles and semi-intangibles, such as accounts and chattel paper, filing would ordinarily involve a commercial loan.

²² See UCC §§ 9-301(2) and 9-312(4). There is a special priority rule with respect to inventory, however, which grants to a purchase money security interest in inventory priority over a security interest perfected by a prior filing only (1) if the filing with respect to the purchase money security interest is made before or at the time the debtor receives possession of the collateral, and (2) the secured party who has previously filed is notified of the purchase money security interest before the debtor receives possession of the collateral. See UCC § 312(3).

²³ See UCC § 9-303.

at the time of the application for the loan and mailed to the Secretary of State immediately or when the secured party knew that he would make the loan.

Another helpful provision of the Code which may also simplify long distance filing is optional Section 9-407, under which the secured party may request from the filing officer a certificate indicating if there are any other financing statements on record with respect to the particular debtor and may ask the filing officer to send him copies of any such statements.²⁴ Thus, in the prior example, in sending the financing statement to the Secretary of State the secured party would include with it a request for such a certificate. Once he had received a receipt for his filing and a certificate that no other filings were on record covering the same collateral, he would be safe to make the loan, for even if some third party should make a loan on the security of the same collateral and file a financing statement between the date that our secured party filed and the date that he made his loan, our secured party would have priority under the first to file rule.²⁵

The second option calls for filing at the debtor's residence if the collateral is farm-connected collateral or consumer goods. The difficulties arising in connection with determining the residence of a corporation or a partnership, which are among the principal objections to the residence test, do not occur when the collateral is consumer goods, since consumer goods are defined as goods used "primarily for personal, family or household purposes,"²⁶ a definition which rules out all goods owned by business entities. Similarly, farm-connected collateral would ordinarily be owned by a farmer with an easily established residence. For those very few cases in which the consumer goods or farm-connected collateral are located in the state but the debtor has no residence in the state, the second option falls back on the rule requiring filing at the location of the collateral. Since in farm and consumer cases it will seldom be necessary to apply this rule, its many problems and difficulties will seldom be encountered.

The third option treats consumer goods and farm-connected collateral the same way as does the second option, but for business collateral it adds local filing in those situations where the debtor has a place of business in only one county (or town) of the state—in other words, where the debtor's operation is more likely to be a local

²⁴ Rather than relying on the filing officer, some secured parties will prefer to utilize a filing service which will check the files for a small fee and which will carry insurance against error. Such a service might be the only alternative in a state where optional Section 9-407 had not been adopted.

²⁵ See UCC § 9-312(5)(a). Our secured party would want to satisfy himself that the debtor had possession of the collateral at the time his security interest was perfected, since if the third party's interest was perfected by a pledge rather than by filing, priority would go to the first to perfect. See UCC § 9-312(5)(b).

²⁶ See UCC § 9-109(1).

one. Where the debtor has places of business in more than one county, the transaction is less likely to be local in character and no local filing is required.

From the point of view of the Searcher, the third option preserves the complete certainty of central filing since he need only check for filings at the Secretary of State's office. The Filer, on the other hand, has the additional burden of determining the proper place of local filing. Since he has none of the problems of determining the residence of a business entity, however, and since no local filing is required where the debtor has places of business in more than one geographical filing entity, his degree of certainty is almost as high as that of the Searcher.

From the point of view of convenience, the advantages of dual filing for business collateral over central filing for business collateral are arguable. Dual filing does not completely eliminate the delay which occasionally could occur in a non-purchase money transaction taking place far from the Secretary of State's office, since a secured party who, all on the same day, filed locally, making sure that there were no other financing statements on record covering the collateral, mailed a financing statement to the Secretary of State and made the loan, theoretically could still be defeated by a third party who had already filed with the Secretary of State, and who then filed locally while our secured party's statement was in the mail to the Secretary of State. This is because dual filing is not effective until it has been done at both places. Furthermore, dual filing means extra work for the Filer. On the other hand, it enables the Searcher who lives near the debtor to do his own checking of the files rather than having to rely on a certificate from the filing office or some filing service.²⁷

From this discussion it is apparent that the three Code options, although each has some drawbacks, have been carefully worked out to avoid or minimize many of the difficulties inherent in prior methods of determining the place for filing security interests.

FILING IN THE FOURTEEN CODE STATES

Most of the fourteen states that have now adopted the Uniform Commercial Code have adopted one of the three options recommended in the official text. Some have done so with minor variations and a few have made substantial departures which have created serious difficulties. To give a general perspective of what has been done—a perspective which may be of assistance to other states considering the adoption of the Code—there is set out hereafter a table showing the

²⁷ There is some likelihood that dual filing will be supported by county or town clerks' associations where filing fees are high enough to be a source of local revenue.

variations adopted in the fourteen states. To make the picture complete the table contains certain additional information.²⁸

It includes data concerning the various filing fees and the fee, in those states that have adopted optional Section 9-407, for obtaining a certificate from the filing officer showing then effective filings as to a particular debtor. It mentions special requirements concerning the form of the financing statement adopted by a few of the states.²⁹ There is also an indication of the alternative that each state has adopted to subsection (3) of Section 9-401. The first of these alternatives provides that a filing made in the proper place in the state continues effective even though the debtor's residence or place of business in the state or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed. The second calls for a new filing within four months after a change to another county in the state (or town, if the town is the geographic filing unit) of the debtor's residence or place of business or the location of the collateral, whichever controlled the original filing.³⁰

Finally, the table points out those states where notation on the certificate of title of a motor vehicle supplants filing as a method of perfecting a security interest in the vehicle.³¹ Following the table

²⁸ It is suggested that those filing financing statements in any of the fourteen states shown in the table consult directly the statutes of the states concerned, since some statutes are in the process of being amended, and since in the preparation of the table it was not always possible to work directly from the official print of the Code as adopted in the particular state or to examine in detail related statutes.

²⁹ The filing officers of a number of states have established filing procedures which make it convenient to use a five-part snapout form of separate financing statement. One copy is retained by the debtor, one by the secured party and the other three are submitted to the filing officer. He notes on them the date and hour of filing and the file number and returns the third copy to the secured party. The third copy has language at the bottom which, with the signature of the secured party, makes it a handy termination statement. This form should be useful in any state that has adopted optional Section 9-407, which in subsection (1) requires the filing officer on request to note the information concerning date and hour of filing and file number on the copy furnished, and to return it. If, in a state which has not adopted Section 9-407, the filing officer fails to return the third copy with the information noted on it but instead returns a separate receipt showing the file number and time of filing, much of the utility of the snapout form is lost, but this does not diminish its effectiveness as a financing statement, since the Code contains no requirement about the size, shape or format of the financing statement, but only specifies the minimum information which must be contained therein. See UCC § 9-402.

³⁰ Neither alternative requires new filing merely because there has been a change in the use of the collateral. For example, a debtor might have given a security interest on a car which he purchased for personal use, but which he later decided to use full time in his business. In a state requiring local filing for consumer goods and central filing for equipment, it would be unnecessary under either alternative to file with the Secretary of State after the use of the collateral changed in order to continue the effectiveness of the original filing.

³¹ Since in almost all states where notation on the certificate of title is the method of perfection a certificate of title is not issued on a new vehicle until it is sold to the ultimate user, Code filing will usually be applicable to security interests in new vehicles

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there is a discussion of filing difficulties which arise in those four states which have made significant departures from the Code options.

Before applying the rules concerning where and how to file in a particular state, it is necessary to inquire whether the law of that state (in particular, Article 9) applies to the perfection of the security interest in the particular collateral. The answer to this question will be found in Section 9-102, which adopts the general rule that this is determined by the location of the collateral; Section 9-104, which excludes certain types of transactions or collateral from Article 9; and Section 9-103, which establishes special conflict of laws rules with respect to intangibles and certain movable goods and collateral brought into the state. There may also be statutes covering interests in specific types of collateral (such as railroad equipment or crops contracted for by a cooperative) which were not repealed when the Code was adopted and may still be in effect.³²

TABLE OF FILING RULES

ARKANSAS

1. *Place of Filing*—Third option, except that dual filing is not required for crops. (a) For farm-connected collateral or consumer goods, file with the Clerk of Circuit Court and Ex-Officio Recorder of the county where the debtor resides, or if the debtor is not a resident, where the goods are kept. (b) File for fixtures with the Clerk of Circuit Court and Ex-Officio Recorder in the county where the land lies. (c) For all other collateral, file with the Secretary of State and, in addition, if the debtor has a place of business in only one county of the state or has a residence and no place of business in the state, file in the county of such place of business or residence.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$2 for all types of statements, and for the certificate issued pursuant to Section 9-407(2).

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.³³

CONNECTICUT

1. *Place of Filing*—First option. (a) File for fixtures with the town or city clerk in the town or city where the land lies. (b) For all other collateral, file with the Secretary of State.

2. *Form of Statement*—The financing statement covering crops or fixtures, in addition to describing the real estate, must give the name of the record owner of the real estate. A statement referring to a prior fixture filing shall do so by book and page.

If the snapout form is used, the Secretary of State would like to receive four

in the hands of a dealer. The Table of Filing Rules makes no effort to cover variations in local title laws.

³² See, e.g., Okla. Stat. Ann. tit. 66, § 16 (1949); Ore. Rev. Stat. § 62.360 (Supp. 1957).

³³ See Ark. Stat. §§ 75-160 and 75-161 (1947).

copies instead of three, the extra copy to be used for security and accounting purposes.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$3 for all types of statements and for the certificate issued pursuant to Section 9-407(2), except \$1 for termination statement and except that fees for fixture filing shall be the same as the real estate filing fees.

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.⁸⁴

ILLINOIS (Effective July 1, 1962)

1. *Place of Filing*—Second option. (a) For farm-connected collateral or consumer goods file with the Recorder of Deeds in the county where the debtor resides, or if the debtor is not a resident, where the goods are kept. For crops, file also with the Recorder in the county where the land lies. (b) File for fixtures with the Recorder of the county where the land lies. (c) For all other collateral, file with the Secretary of State.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$2 for all types of statements, except \$1 for termination statement, statement of release and certificate issued pursuant to Section 9-407(2) plus 50¢ for each statement reported therein.

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.⁸⁵

KENTUCKY

1. *Place of Filing*—Kentucky has not adopted any of the options set out in the official text of the Code. (a) File for fixtures with the county court clerk of the county where the land lies. (b) For all other collateral, file "in the office of the county court clerk in the county of the debtor's residence or if the debtor is not a resident of this state, then in the office of the county court clerk in the county where the goods are kept."

2. *Form of Statement*—The Court of Appeals of Kentucky has held that, despite certain statutes which were not repealed when the Code was enacted, a financing statement need not be acknowledged and a financing statement need not state a maturity date.⁸⁶

Section 382.750 of the Kentucky Revised Statutes requires that references to prior statements shall be by file number and by date filed.

Section 382.770 provides that if the collateral is consumer goods at the time of the filing, the financing statement must show its serial number, if any, and its make, model, year model and motor or identification number, if a motor vehicle.

Section 382.780 provides that if at the time the financing statement is filed there is an indebtedness of \$200 or more, that fact shall be stated.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$1 for a financing statement or a continuation statement; 75¢ for termination statement⁸⁷ and 50¢ for all other statements. Kentucky has not adopted Section 9-407.

⁸⁴ See Conn. Gen. Stat. Ann. §§ 14-185 to 14-190 and 14-203 to 14-209 (1960).

⁸⁵ See Ill. Ann. Stat. ch. 95 1/2, §§ 3-107 to 3-207 (Smith-Hurd 1958).

⁸⁶ Lincoln Bank and Trust Company v. Queenan, 344 S.W.2d 383 (Ky. 1961).

⁸⁷ Section 382.790(3) of the Kentucky Revised Statutes conflicts with Section 9-404(3) which sets a lower fee (50¢) for termination statements.

PLACE OF FILING UNDER UCC

5. *Motor Vehicles*—In the *Lincoln* case referred to above the Court of Appeals of Kentucky held that the law requiring notation of security interests on the registration receipt³⁸ is not a certificate of title law and is not in itself a prerequisite of perfection. It made it a practical prerequisite, however, by holding that a financing statement covering any registered motor vehicle, except a vehicle in a dealer's inventory, can and should be rejected by the county clerk until the security interest is noted on the registration receipt.

MASSACHUSETTS

1. *Place of Filing*—Third option, except that dual filing is not required for crops. (a) For farm-connected collateral or consumer goods, file with the clerk of the town or city where the debtor resides, or if the debtor is not a resident, where the goods are kept. (b) File for fixtures with the Register of Deeds in the county where the land lies. (c) For all other collateral, file with the Secretary of State and, in addition, if the debtor has a place of business in only one town or city of the state or has a residence and no place of business in the state, file with the clerk of the town or city of such place of business or residence.

2. *Form of Statement*—A financing statement covering crops and fixtures, in addition to describing the real estate, must give the name of the record owner of the real estate. If it relates to registered land, it is desirable to include the number of the certificate of title and the volume and page of the registration book in which the certificate is registered. A statement referring to a previous fixture filing must do so by book and page if it relates to unregistered land and to document number if it relates to registered land.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$3 for all types of statements and for the certificate issued pursuant to Section 9-407(2), except \$1 for a termination statement and \$4 for any statement filed with the Register of Deeds.

5. *Motor Vehicles*—Massachusetts does not have a certificate of title act.³⁹

NEW HAMPSHIRE

1. *Place of Filing*—Third option, except that dual filing is not required for crops and there is special filing for buildings on leased land. (a) For farm-connected collateral or consumer goods, file with the clerk of the town or city where the debtor resides, or if the debtor is not a resident, where the goods are kept. (b) File for fixtures in the Registry of Deeds of the county where the land lies. (c) For all other collateral, file with the Secretary of State and, in addition, if the debtor has a place of business in only one town or city in the state or has a residence and no place of business in the state, file with the clerk of the town or city of such place of business or residence. (d) Buildings on leased land shall be deemed real estate for the purposes of conveyancing and recording.

2. *Form of Statement*—A financing statement covering crops or fixtures, in addition to describing the real estate, must give the name of the record owner of the real estate.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$2 for all types of statements and for the certificate issued pursuant to Section 9-407(2), except \$1 for a termination statement.

5. *Motor Vehicles*—New Hampshire does not have a certificate of title law.

³⁸ See Ky. Rev. Stat. Ann. § 186.195 (Supp. 1961).

³⁹ Massachusetts has amended the official version of Section 9-302(1)(c) and (d) to provide that filing is not required to perfect a purchase money security interest in a motor vehicle which is farm equipment costing \$500 or less or is consumer goods.

NEW JERSEY (Effective January 1, 1963)

1. *Place of Filing*—Second option. (a) For farm-connected collateral or consumer goods, file with the clerk of the county where the debtor resides, or if the debtor is not a resident, where the goods are kept. For crops, file also in the county where the land is located. (b) File for fixtures with the register of the county where the land lies, and if the county has no register, with the county clerk. (c) For all other collateral, file with the Secretary of State.

2. *Form of Statement*—A financing statement covering crops or fixtures, in addition to describing the real estate, must give the name of the record owner of the real estate.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$3 for all types of statements and for the certificate issued pursuant to Section 9-407(2), except \$1 for termination statement.

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.⁴⁰

NEW MEXICO

1. *Place of Filing*—New Mexico has departed substantially from the options in the official version of the Code. (a) File for fixtures in the office of the clerk of the county where the land lies. (b) As to all other collateral, file with the clerk in the county where the debtor resides or, if the debtor is not a resident and the collateral is goods, where the goods are kept, and in addition, where the collateral is crops, in the office of the clerk of the county where the land is located. (c) In all other cases, file in the office of the Secretary of State.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$1 for all types of statements, except \$1.50 for a financing statement indicating an assignment and 75¢ for an assignment or statement thereof accompanying a termination statement. Under the New Mexico version of Section 9-407(2) the filing officer will furnish photocopies, at 75¢ per page, of any instrument on file and will certify each photocopy for 50¢.

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.⁴¹

OHIO (Effective July 1, 1962)

1. *Place of Filing*—Third option. (a) For farm-connected collateral or consumer goods, file with the Recorder of the county where the debtor resides, or if the debtor is not a resident, where the goods are kept. For crops, file also in the county where the land is located. (b) File for fixtures with the Recorder of the county where the land lies. (c) For all other collateral, file with the Secretary of State and, in addition, if the debtor has a place of business in only one county of the state or has a residence and no place of business in the state, file in the county of such place of business or residence.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$1 for all types of statements, except \$1.50 for the certificate issued pursuant to Section 9-407(2).⁴²

⁴⁰ See N.J. Stat. Ann. § 39:10-14 (1961).

⁴¹ See N.M. Stat. Ann. §§ 64-1-17 and 64-4-9 to 64-5-2 (1960).

⁴² Ohio does not use the Code numbering system. This provision appears as Section 1309.40(G) of the Ohio Revised Code.

PLACE OF FILING UNDER UCC

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.⁴³

OKLAHOMA (Effective December 31, 1962)

1. *Place of Filing*—Second option. (a) For farm-connected collateral or goods,⁴⁴ file with the clerk of the county where the debtor resides, or if the debtor is not a resident, where the land is located. For crops, file also in the county where the land is located. (b) File for fixtures with the clerk of the county where the land lies. (c) For all other collateral, file with the *Clerk of Oklahoma County*.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—New filing required within four months.

4. *Fees*—50¢ for all types of statements, except no fee for termination statement or statement of release and \$1 for the certificate issued pursuant to Section 9-407(2) plus 25¢ for each statement reported therein.

5. *Motor Vehicles*—Oklahoma has a certificate of title law requiring that every application for a certificate of title should indicate outstanding security interests.⁴⁵ These are noted on the certificate of title. Security interests arising thereafter are not noted on the certificate and would appear thereon only if a new certificate was issued in connection with a transfer of title. Oklahoma has adopted the first alternative in the official text of the Code to Section 9-302(3)(b), which provides that the filing provisions of the Code are inapplicable if state law "requires indication on a certificate of title" or a security interest. Although this creates an ambiguity, it is probable that Code filing is required in order to perfect all security interests in motor vehicles.

OREGON (Effective September 1, 1963)

1. *Place of Filing*—Third option. (a) For farm-connected collateral or consumer goods, file with the clerk of the county where the debtor resides, or if the debtor is not a resident, where the goods are kept. For crops, file also in the county where the land is located. (b) File for fixtures with the Recorder of Conveyances of the county where the land lies, or if there is no Recorder of Conveyances in that county, with the county clerk. (c) For all other collateral, file with the Secretary of State and, in addition, if the debtor has a place of business in only one county in the state or has a residence but no place of business in the state, file with the clerk of the county of such place of business or residence.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$1 for all types of statements, and for certificate issued pursuant to Section 9-407(2).⁴⁶

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.⁴⁷

⁴³ See Ohio Rev. Code Ann. § 4505.13 (Baldwin 1958).

⁴⁴ By amendments to Section 9-302, Oklahoma requires filing to perfect a non-possessory purchase money security interest in all consumer goods and farm equipment.

⁴⁵ See Okla. Stat. Ann. tit. 47, §§ 23.3 and 23.6 (Supp. 1960).

⁴⁶ Oregon does not use the Code numbering system. This provision appears as Section 79.4070 of the Oregon Revised Statutes.

⁴⁷ See Oregon Rev. Stat. §§ 481.405 to 481.425 (Supp. 1959).

BOSTON COLLEGE INDUSTRIAL AND COMMERCIAL LAW REVIEW

PENNSYLVANIA

1. *Place of Filing*—Third option. (a) For farm-connected collateral or consumer goods, file with the Prothonotary of the county where the debtor resides, or if the debtor is a non-resident, where the goods are kept. For crops, file also in the county where the land is located. (b) File for fixtures with the Recorder of Deeds in the county where the land lies. (c) For all other collateral, file with the Secretary of State and, in addition, if the debtor has a place of business in only one country in the state or has a residence but no place of business in the state, file with the Prothonotary of the county of the place of business or residence.

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—New filing required within four months.

4. *Fees*—\$3 for financing statement or continuation statement, \$2 for all other statements. Pennsylvania has not adopted Section 9-407.

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.⁴⁸

RHODE ISLAND

1. *Place of Filing*—Second option, except central rather than local filing for consumer goods. (a) For farm-connected collateral file with the Recorder of Deeds in the city or town where the debtor resides, or if the debtor is not a resident, where the goods are kept. For crops, file also in the city or town where the land is located. (b) For fixtures, file with the Recorder of Deeds in the town or city where the land lies. (c) For all other collateral (including consumer goods), file with the Secretary of State, except that "no financing statement or security agreement shall be received for filing where the collateral is consumer goods having an aggregate original purchase price of less than \$300, excluding interest, insurance, and other finance charges."

2. *Form of Statement*—A financing statement covering crops or fixtures, in addition to a description of the real estate, must give the name of the record owner of the real estate. Each financing statement shall contain a statement indicating whether the collateral is consumer goods having an aggregate original purchase price of less than \$300, excluding interest, insurance, and other finance charges. The statute provides that the omission of such statement shall not affect the validity of the security interest described therein.

3. *Change of Residence, Place of Business or Location of Collateral*—No new filing required.

4. *Fees*—\$2 for all types of statements, except \$1 for a termination statement or a statement or assignment accompanying a termination statement and \$2 for the certificate issued pursuant to Section 9-407(2) plus 50¢ for each statement reported therein.

5. *Motor Vehicles*—Rhode Island has no certificate of title law.

WYOMING

1. *Place of Filing*—Wyoming departs completely from the official options. (a) When the collateral is accounts, "file in the office of the Secretary of State and in the office of the county clerk for the county in which the assignor has his principal place of business." (b) File for fixtures with the Register of Deeds of

⁴⁸ See Penna. Stat. Ann. tit. 75, §§ 202 to 208 (1960). Any ambiguity on this point under the earlier version of the Code in Pennsylvania has been eliminated by adoption of the second alternative to Section 9-302(3)(b) in the 1958 Official Text of the Code.

PLACE OF FILING UNDER UCC

the county where the land lies. (c) In all other cases, file "in the office of the county clerk for the county in which the debtor has his principal place of business, if any; otherwise his residence."

2. *Form of Statement*—No special requirements.

3. *Change of Residence, Place of Business or Location of Collateral*—New filing required within four months.

4. *Fees*—\$2 for financing statement, continuation statement and separate statement of assignment; \$1 for termination statement, statement of release and assignment accompanying termination statement. Wyoming has not adopted Section 9-407.

5. *Motor Vehicles*—Note security interest on certificate of title if one has been issued or is required.⁴⁹

OUT OF THE FRYING PAN

The difficulties which may arise in making even insubstantial departures from the options recommended by the authors of the Code are well illustrated in some of the foregoing states.

In Rhode Island, for example, which has adopted essentially the second option, filing for consumer goods (other than fixtures) must be made centrally rather than locally and there is a provision prohibiting the Secretary of State from receiving a financing statement where the collateral is consumer goods with an original cost of less than \$300. In order to further implement this provision, each financing statement must indicate whether or not it covers consumer goods costing less than \$300. The result would seem to be that it is impossible in Rhode Island to perfect a non-purchase money security interest in consumer goods (other than fixtures) with an original cost of less than \$300, and if the consumer goods are a motor vehicle with an original cost of less than \$300, even a purchase money security interest cannot be perfected since Section 9-302(1)(d) excludes fixtures and motor vehicles from this provision, which otherwise provides that a purchase money security interest in consumer goods is perfected without filing.

It may have been that the authors of this amendment meant to limit its application to purchase money security interests in consumer goods costing less than \$300,⁵⁰ but their language seems to go further. If the objective in Rhode Island was to reduce the possibility that consumers purchasing small items on conditional sale contracts would be required to pay filing fees in addition to the other finance charges, it would have been more desirable to take care of this outside of the Code. The changes that have been made have produced the anomalies already referred to and in addition, have required that every financing statement, even though it has nothing to do with a consumer trans-

⁴⁹ See Wyo. Stat. Ann. §§ 31-33 to 31-43 (1957).

⁵⁰ Rhode Island has amended § 9-307(2) to eliminate the provisions which make an unfiled purchase money security interest in consumer goods vulnerable in the case of a sale thereof to another consumer.

action, must be cluttered up with a statement of whether it does or does not cover consumer goods costing less than \$300. Section 9-402(5) of the Rhode Island Code provides that failure to include this provision in the financing statement does not affect the "validity" of the security interest. Because of the distinction elsewhere in Article 9⁵¹ between validity and perfection, this suggests that failure to include the provision *would* affect its perfection.

Since there are probably very few transactions occurring in Rhode Island in which the secured party would want a perfected non-purchase money security interest in consumer goods costing less than \$300, the practical effect of the Rhode Island departures would seem to relate primarily to the form of the financing statement. The possibility of the financing statement omitting to assert that the collateral is not consumer goods costing less than \$300 could be reduced by printing a special form of financing statement for use in Rhode Island which would contain just such an assertion. A much better solution would be to amend the law to eliminate the requirement.

New Mexico has departed from the Code options to adopt three successive alternative places to file for collateral other than fixtures. First is the debtor's residence, then the location of the collateral if the collateral is goods, and finally central filing for any transaction that does not fit into one of the first two categories. This immediately creates all the problems previously discussed when the residence test is applied to business transactions, and the fall back to the location of the collateral, particularly in those business transactions where the debtor is a non-resident, raises all the difficulties discussed in connection with that method of determining the place to file. New Mexico does not require a new filing where the location of the collateral is changed, even if that location governed the original filing. This makes reliance on filing with respect to non-resident debtors doing business in New Mexico highly dangerous unless the Searcher has accurate knowledge of the location of the collateral during the entire period it has been owned by the debtor. Financing the inventory of a resident debtor with outlets in all counties in New Mexico would require only one filing, but if the debtor was a corporation organized outside of New Mexico (which would probably make it a non-resident), a filing would have to be made in every county. If the security agreement covered proceeds or specifically covered accounts receivable and chattel paper resulting from the sale of the inventory, filing for a resident debtor would still be only at its residence, but for a non-resident debtor it might be necessary to file both where the goods were located (to cover the goods) and with the Secretary of State (to cover the proceeds or the accounts and chattel paper).

⁵¹ See, e.g., UCC § 9-103.

PLACE OF FILING UNDER UCC

Note that a Searcher interested in accounts receivable financing could use the Secretary of State's files only for non-resident debtors. A further problem arises if a non-resident debtor grants a security interest in or signs a financing statement for goods which he does not yet own. Suppose some of the goods are at that time held by a dealer in county A, but the debtor plans to use them in county B. Presumably, the secured party would file in county B because that would probably be considered the "location of the goods" at the time the security interest attached, although this is not at all clear. Suppose the goods were not yet in existence and the debtor had not decided where he would use them. Filing with the Secretary of State would not solve the problem since such filing is probably effective only for collateral other than goods when the debtor is a non-resident. In such a situation, filing before the collateral was acquired by the debtor would seem impossible. The timing problems referred to in the general discussion of the drawbacks to filing at the location of the collateral are multiplied one hundred fold when this rule for determining the place of filing is used with the Code.

Add to this such problems as determining the residence of a local partnership and the New Mexico rules seem to involve greater uncertainty, greater inconvenience and more pitfalls for the unwary than any of the options worked out by the draftsmen of the Code.

Kentucky's departure from the Code options is even less satisfactory than New Mexico's. It calls for filing at the residence of the debtor or if the debtor is a non-resident, at the place where the *goods* are kept. This solution is subject to all of the difficulties mentioned for New Mexico. It is subject to the further difficulty that if the debtor is a non-resident and the collateral is not goods, no place to file is specified at all.⁵²

The Wyoming departure is a novel one. It requires central and local filing for accounts. For all other collateral, the filing is with the county clerk where the debtor has his principal place of business, and if he has no place of business, where he has his residence. Presumably, the place of business test applies to consumer goods as well as to business collateral. Thus, if a man lives in county A, has his place of business in county B and buys a refrigerator for his house

⁵² This failure to specify the place of filing with respect to intangibles of a non-resident debtor will undoubtedly be corrected by an amendment to the Kentucky statutes. Until such an amendment is adopted, a secured party taking a security interest in, for example, the accounts receivable of a non-resident debtor can assume that the courts of Kentucky will fill the gap by a judicial decision which may adopt any of the following places for determining the county in which to file: the principal place of business of the debtor in Kentucky; the address used by the debtor in qualifying as a foreign corporation in Kentucky; or the place where the debtor keeps its records of the accounts in Kentucky (compare UCC § 9-103(1)). Pending a decision on which is the proper place, a conservative secured party should file in the county or counties where all three are located.

in county A, filing would be required in county B. If his wife bought the refrigerator, however, filing would be in county A, since she has no place of business.⁵³ This also raises the question whether an individual who is not a proprietor or partner in a business, but is a salaried employee, has a place of business. Assuming that he does have a place of business, a new filing would be required in Wyoming if his company moved him from the plant in county B to a plant in county C. The salaried employee problem is unlikely to arise if the place of business test is limited to business collateral, since in that situation the debtor is usually a partnership, corporation or proprietor, rather than an employee. The Wyoming solution would seem to require central filing whenever the collateral included proceeds. In addition, it raises the problem of determining the debtor's principal place of business in cases where the debtor has places of business in several counties. Finally, Wyoming would not seem to specify a place to file for collateral (other than accounts receivable) located in the state and belonging to a debtor who had no place of business or residence within the state.

The problems discussed above in connection with all four states are not insoluble ones and should not interfere with the successful operation of the Code in those states. Many of the problems will not arise too often, and when they do, increased vigilance in determining the place to file or the use of multiple filing where more than one choice is possible, will usually serve the purpose. The fact, however, that the problems are manageable ones, is no justification for their existence.

CONCLUSION

Departures from the three options recommended by the sponsors of the Code not only result in non-uniformity but, on the basis of experience to date, cause much more trouble than they cure. The three options have been carefully worked out, taking into account the problems and criteria discussed in this article. The third option has been in effect in some states for several years, and although the other two options have been in effect for shorter periods, the indications are that all three are workable, sensible and practical arrangements. It is hoped that each state adopting the Code in the future will look with favor on one of them.

⁵³ Although a purchase money security interest in consumer goods does not require filing for perfection, filing is necessary to protect the secured party against the sale to another consumer. UCC §§ 9-302(1)(d) and 9-307(2).